* **IN THE HIGH COURT OF DELHI**

\+ **Writ Petition (C) No. 6466 of 2002**

% Date of decision : 2nd December, 2004.

Nb. Sub. Ramesh Kumar ..... Petitioner.
represented by Mr.V.P. Sharma, Advocate

versus

Union of India and others ..... Respondents.
represented by Mr.Amiet Andley,
Advocate

CORAM:
HON'BLE JUSTICE DR. MUKUNDAKAM SHARMA.
HON'BLE MS. JUSTICE GITA MITTAL.

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest?

Dr. Mukundakam Sharma, J :

1. By filing present writ petition, the petitioner has prayed for quashing of the orders dated 14th July, 2001 and 21st July, 2000 giving promotion to the petitioner to the rank of Nb. Subedar only with effect from 1st January, 2000 with seniority from 1st of August, 1997 but not granting any benefits of promotion from 1st August, 1997 as payment of salary and other emoluments from the said date in the

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post of Nb. Subedar.

2. The petitioner was enrolled in the Army on 19th March, 1983 as Sepoy. The petitioner was promoted to the rank of Havaldar on 1st August, 1989. While working in the aforesaid capacity, a Summary Court Martial was initiated against the petitioner for an offence under Sections 41(i), 39(a) and 63 of the Army Act. After completion of the said Court Martial, the petitioner was imposed with the punishment of reduction of the ranks, rigorous imprisonment for one year in civil prison and also dismissal from the service.

3. Aggrieved by the finding and sentence of the Summary Court Martial, the petitioner filed a statutory complaint under Section 164 of the Army Act. The said complaint was considered and disposed of by the order dated 17th August, 1994 by the Central Government by commuting the punishment and sentence of the Summary Court Martial of reduction to ranks and one year rigorous imprisonment to severe reprimand and also remitted the sentence of dismissal with a further direction that the individual would be reinstated in service. It was also observed in the said order that the period between the date of dismissal and date of reinstatement in service will not be treated as duty and he would not be paid pay and allowances due to him for the said period.

(13)

4. Consequent to the said order passed by the Government of India the petitioner was reinstated in service with effect from 29th October, 1994 in terms of the said order passed by the Government of India. It further transpires from the records that the petitioner was again tried summarily on 18th February, 1995 for an offence under Army Act Section 54(b) and was awarded severe reprimand.

5. The case of the petitioner came up for promotion to the rank of Nb. Subedar with effect from 1st August, 1997 and the case of the petitioner was considered by the Departmental Promotion Committee held on 17th May, 1997. He was, however, found not fit for promotion and was superceded as he could not meet the criteria having incurred two red ink entries during last five years. It is provided in para 3(a) of promotion policy issued vide Army Headquarters letter dated 10th October, 1997 that the concerned person should not have incurred more than one red ink entry during the last five years.

6. It is the case of the respondents that though the petitioner was awarded punishment by Summary Court Martial on 3rd June, 1992 but the punishment period of the last five years was counted with effect from 17th August, 1994, the date commutation/remission was granted by the Government.

(14)

7. As the Government order dated 17th August, 1994 did not specifically spell the date from which the commutation of punishment is deemed to take effect, therefore, in absence of any specific date, it was held that the government order would be deemed to have taken effect from the date of original sentence i.e. from 3rd June, 1992 and not 17th August, 1994. Therefore, a fresh DPC proceeding was ordered. The Departmental Promotion Committee considered the case of the petitioner for promotion to the rank of Nb. Subedar on 15th March 2000 and duly recommended for promotion with effect from 1st January, 2000 with ante dated seniority along with his batch mates with effect from 1st August, 1997.

8. The petitioner had consequently assumed the rank of Nb. Subedar on 13th November, 2000. It is stated that there was no direction for payment of any pay and allowances to the petitioner in the higher rank as he is entitled to the same from the date he actually assumed the charge of the said rank and not from ante dated seniority which is granted for further promotion. Since the respondents refused to give promotion to the petitioner by giving him pay and allowances in the rank of Nb. Subedar with effect from 1st August, 1997, therefore, the present writ petition was filed in this Court seeking for the aforesaid relief.

9. It was submitted by the counsel for the petitioner that since the petitioner has been given ante dated seniority along with his batch mates with effect from 1st August, 1997, therefore, there was no scope for recommending for promotion only with effect from 1st January, 2000 and not from 1st August, 1997 thereby depriving the petitioner from getting the pay and allowances and other benefits from 1st August, 1997.

10. The petitioner was tried by Summary Court Martial and was awarded punishment on 3rd June, 1992 which, however, later on came to be commuted to severe reprimand with remission of the sentence of dismissal. However, a clear direction was also issued that the period between the date of dismissal and date of reinstatement in service would not be treated as duty and he would not be paid pay and allowances due to him for the said period. The said order was passed on 29th October, 1994. The petitioner even thereafter was tried summarily on 18th February, 1995 and was again awarded a punishment of severe reprimand. On 17th May, 1997 when the case of the petitioner was considered for promotion to the rank of Nb. Subedar with effect from 1st August, 1997, he was not found fit for promotion as he had incurred two red ink entries during the last five years. The first sentence was imposed on the petitioner on 3rd June,

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1992 and the second sentence was imposed on 18th February, 1995. According to the extant consideration of the respondents, an individual, who is considered for promotion to the rank of Nb. Subedar, should not have more than three red ink entries during the entire service and more than one red ink entry in the last five years. The case of the petitioner for promotion to the rank of Nb. Subedar with effect from 1st August, 1997 came up for consideration but on the date of consideration, the petitioner did not satisfy the criteria for promotion as he had two red ink entries in his service career. However, subsequently a fresh DPC was held after the orders passed by the government and it was held that petitioner could be promoted with effect from 1st January, 2000, the date when the first available vacancy had arisen with a further direction that he should be given ante dated seniority with his batch mates with effect from 1st August, 1997. Since petitioner has also been given seniority from 1st August, 1997, therefore, for further promotion, the petitioner would have to be considered along with his batch mates and, therefore, from the point of view of seniority there could be no grievance of the petitioner. The only grievance that survives now for consideration is whether the petitioner would also be held to be entitled to receive pay and allowances with effect from 1st of August, 1997. The respondents

have denied the said benefit on the ground that the commutation of the sentence of the dismissal from service and the rigorous imprisonment came to be passed by the Central Government on 17th August, 1994 and, therefore, the said order would be effective from the said date. It was also stated in the said order that the period between the date of dismissal and date of reinstatement in service would not be treated as duty. Therefore, for all practical purposes the order passed by the Central Government had been given effect from the date the said order was passed i.e. on 17th August, 1994 and since the petitioner had two red ink entries on 17th August, 1997, it cannot be held that he should be given pay and allowances in the post of Nb. Subedar from 1st August, 1997.

11. Counsel for the petitioner relied upon the decisions of the Supreme Court in *Vasant Rao Roman v. The Union of India* (Civil Appeal No.709/1993 decided on 4.3.1993) reported in Vol. 9 Supreme Court Service Rulings 213; *Union of India v. K.V. Jankiraman* reported in AIR 1991 SC 2010; *State of Andhra Pradesh v. K.V.L.Narasimha Rao & Ors.* reported in JT 1999 (3) SC 205.

12. We have considered the ratio of the aforesaid decisions. In *Vasant Rao Roman* (supra), the Supreme Court directed for payment of all arrears of emoluments from a retrospective date in

view of the fact that the employee was neither put under suspension nor any disciplinary proceeding was pending against him and that on the contrary he was made to suffer on account of administrative reasons for which the employee was not responsible. In the said case the employee, who was literate, was deputed for table work and therefore, for administrative reasons he could not complete requisite number of firing kilometers and, therefore, it was held that there was no fault on his part for which his juniors had been promoted as Shunters and Drivers and his claim was ignored on account of not having completed requisite number of firing kilometers.

13. In *State of Andhra Pradesh* (supra), it was held by the Supreme Court that in normal circumstances when the retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. In the said case the Supreme Court also held that there could be cases where grant of notional promotion should not legitimately give rise to a valid claim for payment of arrears of salary either on the ground that the officer did not actually hold the post at the relevant time or otherwise. It was, however, held in the facts of the said case by the Supreme Court that the said principles should not be applied to the facts of the said case as a

wrong was committed in unduly delaying the finalisation of seniority and giving promotions thereto and hence denial of monetary benefits to them would be arbitrary in violation of Articles 14 and 16 of the Constitution.

14. In *Union of India v. K.V. Jankiraman* (supra), the Supreme Court was dealing with sealed cover procedure and in the context thereof it was held that the normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. A direction was issued to pay the arrears salary on the ground that the said case was not a case where the employee remained away from work for his own reasons, although the work was offered to him.

15. In our considered opinion, none of the ratio laid down in the said decisions is applicable to the facts of the present case. The petitioner had two red ink entries. By order dated 3rd June, 1992, he was dismissed from service but by the subsequent order passed on 17th August, 1994, his sentence was commuted and he was given a sentence of severe reprimand but clear instructions were given that the period between the date of dismissal and date of reinstatement in service would not be treated as duty. The said order was, therefore, held to be operative from the said date i.e. 17th August, 1994. The

petitioner, therefore, was rightly not given the pay and allowances from 1st August, 1997, which benefit has been given to him only with effect from 13th November, 2000 when he actually joined the said rank of Nb. Subedar but maintaining his seniority from 1st August, 1997 when his batch mates were promoted. Therefore, the interest of the petitioner for further promotion has been protected. In the facts of the present case, we are of the considered opinion, that the petitioner has no legitimate and valid claim for payment of salary and allowances from a retrospective date i.e. from 1st August, 1997 as the principle of 'no work no pay' is applicable in the facts of the case and also as he did not actually hold the said post. It is also not a case of administrative lapse or fault which could entitle the petitioner for such benefit.

16. We find no infirmity in the impugned orders passed by the respondents. We find no merit in this petition and the same is dismissed.

(Dr.Mukundakam Sharma)
Judge

(Gita Mittal)
Judge

2nd December, 2004.
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